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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/673,984	09/30/2003	Robert Babiak		3949

7590

04/20/2004

Kathleen Semet
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EXAMINER

VANATTA, AMY B

ART UNIT	PAPER NUMBER
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3765

DATE MAILED: 04/20/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/673,984	Applicant(s) BABIAK, ROBERT	
	Examiner Amy B. Vanatta	Art Unit 3765	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 September 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 30 September 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. An examination of this application reveals that applicant is prosecuting the application as a *pro se*, and that the correspondence address lists the name of a person who is not an inventor, an assignee, or an attorney or agent appointed to prosecute the application and registered to practice before the Patent and Trademark Office.

Although the correspondence will be mailed to the correspondence address supplied by applicant, all communications (e.g. mailings or phone calls) regarding the application will only be made with the inventor (or with a registered attorney or agent after filing of a power of attorney). See 37 CFR 1.33. All correspondence concerning this application must be signed by: 1) all named applicants (inventors), 2) all the owners of the rights to the invention, or 3) a registered attorney or agent duly appointed by the inventor(s) or the owner(s).

Drawings

2. The drawings are objected to because they include descriptions of the reference numerals which are not appropriate in the figures. The description of the reference numerals should appear in the specification, in the Detailed Description of the Invention, rather than in the drawings. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

3. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: "3" and "4" (as mentioned on page 3 of the specification).

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Specification

4. The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed.

5. The use of the trademark "Velcro" has been noted in this application. It should be capitalized wherever it appears and be accompanied by the generic terminology.

Although the use of trademarks is permissible in patent applications, the proprietary nature of the marks should be respected and every effort made to prevent their use in any manner which might adversely affect their validity as trademarks.

6. The disclosure is objected to because of the following informalities: The Brief Description of the Drawing should give a brief description of the general figure (i.e. the one figure present by applicant), rather than a brief description of each reference numeral. The descriptions of the reference numerals should appear in the Detailed Description of the Invention. See the information below and see the patents cited for examples.

Appropriate correction is required.

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Brief Description of the Several Views of the Drawing(s): See MPEP § 608.01(f).
A reference to and brief description of the drawing(s) as set forth in 37 CFR 1.74.

Detailed Description of the Invention: See MPEP § 608.01(g). A description of the preferred embodiment(s) of the invention as required in 37 CFR 1.71. The description should be as short and specific as is necessary to describe the invention adequately and accurately. Where elements or groups of elements, compounds, and processes, which are conventional and generally widely known in the field of the invention described and their exact nature or type is not necessary for an understanding and use of the invention by a person skilled in the art, they should not be described in detail. However, where particularly complicated subject matter is involved or where the elements, compounds, or processes may not be commonly or widely known in the field, the specification should refer to another patent or readily available publication which adequately describes the subject matter.

Claim Objections

7. Claims 1-3 are objected to because of the following informalities: The claims should be numbered as 1, 2, and 3 rather than as I, ii, and iii. Appropriate correction is required.

Claim Rejections - 35 USC § 112

8. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

9. Claims 1-3 are rejected as failing to define the invention in the manner required by 35 U.S.C. 112, second paragraph.

The claim(s) are narrative in form and replete with indefinite and functional or operational language. The structure which goes to make up the device must be clearly

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and positively specified. The structure must be organized and correlated in such a manner as to present a complete operative device. Each claim must be in one sentence only. Note the format of the claims in the patent(s) cited.

The claims are indefinite in claiming the structure of the covering. Claim 1 recites the function of the device only, without reciting any actual structure which makes up the device.

Claim 1 is indefinite in claiming that the covering protects an infant from "all objects". It would be an impossibility for the covering to protect the infant from all possible objects that exist.

Claim 2 recites "the patterns", "the fabric", and "the baby" without antecedent basis.

Claim 3 recites "the padding", "the adult", and "the baby's head" without antecedent basis.

Claim Rejections - 35 USC § 102

10. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

11. Claims 1-3 are rejected under 35 U.S.C. 102(b) as being anticipated by Hansen et al (US 5,709,000).

Hansen et al disclose a baby pillow and drool guard which forms a protective padded covering as claimed (see Figs. 1, 4, and 6 of Hansen). The protective covering stays in place and protects the infant from sharp or hard items, and protects the wearer from spit up, as claimed (see, e.g., col. 1, lines 15-24). The covering provides a comfortable and soothing place to rest the baby and the padding provides comfort for the wearer, as claimed. Regarding the recitation in claim 2 that the baby "is stimulated by the patterns on the fabric", it is noted that the fabric is not positively claimed as having patterns thereon. Moreover, the protective covering of Hansen is made of fabric (col. 2, lines 42 and 62) and includes patterns to the extent claimed, since patterns would be created on the fabric by the lines of stitching, the shape of the components and cuts, etc. The reaction of a baby to the patterns or to the other elements of the protective cover does not further define the actual structure of the claimed product over that of Hansen et al.

12. Claims 1-3 are rejected under 35 U.S.C. 102(b) as being anticipated by Bolds-Leftridge (US 2002/0108162).

Bolds-Leftridge discloses a bib which forms a protective covering as claimed. The protective covering includes padding 70 (Fig. 4A, and see page 2, last two lines of paragraph 0023). The protective covering stays in place as claimed. The protective covering includes patterns on the fabric, as in claim 2 (see indicia shown on bib front in Fig. 4A and page 2 paragraph 0023; and see fabric disclosed in paragraphs 0018 and 0021). The covering provides protection from sharp or hard items, and protects the

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wearer from spit up, as claimed. The protective cover of Bolds-Leftridge is capable of functioning as in claims 1-3. Regarding the recitations pertaining to the use of the covering by an adult who is holding an infant, such recitations are drawn to the intended use of the device. It has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQ2d 1647 (1987).

Conclusion

13. The following are suggested formats for either a Certificate of Mailing or Certificate of Transmission under 37 CFR 1.8(a). The certification may be included with all correspondence concerning this application or proceeding to establish a date of mailing or transmission under 37 CFR 1.8(a). Proper use of this procedure will result in such communication being considered as timely if the established date is within the required period for reply. The Certificate should be signed by the individual actually depositing or transmitting the correspondence or by an individual who, upon information and belief, expects the correspondence to be mailed or transmitted in the normal course of business by another no later than the date indicated.

Certificate of Mailing

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to:

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

on _____
(Date)

Typed or printed name of person signing this certificate:

Signature: _____

Certificate of Transmission

I hereby certify that this correspondence is being facsimile transmitted to the United States Patent and Trademark Office, Fax No. (703)_____ - _____ on _____.
(Date)

Typed or printed name of person signing this certificate:

Signature: _____

Please refer to 37 CFR 1.6(d) and 1.8(a)(2) for filing limitations concerning facsimile transmissions and mailing, respectively.

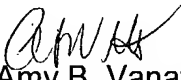
14. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Amy B. Vanatta whose telephone number is 703-308-2939. The examiner can normally be reached on Monday through Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Calvert can be reached on 703-305-1025. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Amy B. Vanatta
Primary Examiner
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